

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In Re:)	
)	
Donald F. Wellington,)	Case No: 20-10080
)	Chapter 11
Debtor.)	

APPLICATION TO EMPLOY McGUIREWOODS, LLP
AS SPECIAL COUNSEL

NOW COMES Donald F. Wellington, Debtor-in-Possession (“Debtor”), by and through counsel, and requests authority pursuant to § 327(e) of the United States Bankruptcy Code to employ McGuireWoods, LLP to act as special counsel; and in support of which shows unto the Court the following:

1. The above captioned Debtor filed a voluntary petition under Title 11, Chapter 11 of the United States Bankruptcy Code on January 24, 2020. Since the filing, the Debtor has operated as a Debtor-in-Possession.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The Debtor desires to retain and seeks approval by this Court for the employment of McGuireWoods, LLP (“Special Counsel”) for the purposes of representing the Debtor and assisting the Debtor-in-Possession Attorney in connection with the Debtor’s involvement in certain New York developments, New York litigation, numerous bankruptcy filings in New York, and the effect such activities may have on this Chapter 11 filing. Special Counsel, as shown by the biographies attached hereto as Exhibit A, has expertise regarding complex litigation and bankruptcy related matters which have been filed in the State of New York. Special Counsel has knowledge of the matters pending

before the New York Courts. Special Counsel has worked with the Debtor and Debtor attorney prior to the filing of this Chapter 11.

4. Except as disclosed herein Special Counsel represents no connection with this case, represents or holds no interest adverse to the interest of the estate with respect to the matters on which they are to be employed, and is disinterested, as that term is defined in 11 U.S.C. §101. Even if the prior representation resulted in Special Counsel not being “disinterested”, this prior relationship does not disqualify Special Counsel, as Special Counsel does not have to be “disinterested” pursuant to § 327(e) of the Code. Special Counsel prior to the Chapter 11 also represented the Debtor’s daughter in the New York litigation and related matters. Even though said daughter has retained North Carolina counsel, Special Counsel has continued to represent the daughter in New York. The representation of the daughter does not represent an adverse interest concerning this Debtor and the matters for which Special Counsel is being retained. Attached hereto and incorporated herein by reference as Exhibit B is an Affidavit of Disinterest for McGuireWoods LLP.

5. Special Counsel currently holds a retainer from the Debtor, for prior litigation matters, in the sum of \$119,389.96. Special Counsel proposes to charge the Debtor at an hourly rates of \$580.00 to \$975.00.

6. The Debtor seeks authorization to pay Special Counsel, in the ordinary course of business, for those services as indicated above, with compensation subject to the approval of the United States Bankruptcy Court to be paid pursuant to the rules governing the Middle District of North Carolina.

7. Special Counsel can and will provide specific benefits to the bankruptcy estate and its legal services will enhance the administration of this case. The Debtor believes that such services will be in the best interest of all parties involved in this proceeding. The factual knowledge by Special Counsel in matters relating to New York will substantially assist the attorney for the Debtor in the representation of this Debtor.

WHEREFORE, the Debtor respectfully requests that the Court:

1. Authorize the employment of McGuireWoods, LLP as Special Counsel;
2. Authorize compensation of McGuireWoods, LLP at the hourly rates between \$580.00 to \$975.00 with compensation subject to the approval of the United States Bankruptcy Court to be paid pursuant to the rules governing the Middle District of North Carolina; and
3. For such other and further relief as the Court deems just and appropriate.

This the 4th day of March 2020.

s/Charles M. Ivey, III

Charles M. Ivey, III, NCSB #8333

Attorney for Debtor

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PRACTICES

Financial Services Litigation

Commercial Litigation

Trials

Over the past decade, Michael has devoted his practice to litigating and trying complex contractual disputes across the country, with a focus on the United States District Court for the Southern District of New York and the Commercial Division of the New York State Supreme Court.

Michael has secured summary judgment and other pre-trial victories on matters collectively worth more than \$600 million for parties ranging from large international banks to officers and directors of closely held corporations. Michael successfully tried two separate post-acquisition contractual disputes, each with more than \$20 million at stake. Michael's extensive trial experience has led to him being regularly asked to participate in client "roundtables" to provide feedback on strategies for upcoming trials. Michael also helps to run the McGuireWoods Trial Advocacy Academy, helping to prepare the next generation of trial lawyers for the firm. Along with his background in complex commercial litigation, Michael has broad litigation experience in financial services, adversary actions in bankruptcy and reorganization proceedings, internal investigations, and regulatory inquiries.

While earning his undergraduate degree from Rollins College, Michael was honored as a Nina O. Dean Scholar.

EXPERIENCE

- Lead litigation counsel to the former chief financial officer of a leading financial institution in connection with securities fraud class actions and derivative actions.
- Lead litigation counsel to leading financial institution as administrative agent for \$8 billion bridge loan in defense of an adversary proceeding brought by committee of unsecured creditors. Led trial team of ten attorneys in preparation for largest constructive fraud action in U.S. history.
- Counsel to leading financial institution as senior secured lender in connection with actions instituted by a financial services company's offshore investors and creditors.
- Lead litigation counsel to financial institution as plaintiff in actions against defaulted foreign derivatives counterparties. Secured pre-discovery summary judgment on behalf of client.
- Representation of an automotive electronics and mechatronics supplier to manage multinational internal inquiry into operations and internal controls in connection with U.S. Department of Justice (DOJ) global corruption investigation. Led team of more than 20 attorneys investigation bribery allegations in China, South Korea, Russia, Germany and the Czech Republic; directed forensic investigation team;

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personally conducted more than 50 interviews and presented ultimate findings to DOJ counsel.

- Counsel in connection with an automotive manufacturer's investigation regarding rollovers of its sports utility vehicles.
- Lead counsel to several individuals in federal antitrust and corruption investigations. Prepared clients for testimony and interviews; negotiated plea agreements with DOJ.
- Representation of a company's chief executive officer to manage internal investigation into allegations of misconduct. Led team of eight attorneys in discrete, highly confidential, and time-sensitive investigation involving interviews of more than 30 members of company personnel; presented findings and recommendations to special committee of company's board of directors.
- Representation of various banks and accounting firms in inquiries and investigations by the Securities & Exchange Commission.
- Representation of various companies in connection with possible antitrust enforcement actions.
- Member of trial team in a firm's obstruction of justice trial. Managed civil and regulatory document production; prepared witnesses for trial testimony; prepared closing argument outline; conducted internal investigation into alleged document destruction; prepared discovery and pre-trial motions.

EDUCATION

- University of Michigan Law School, JD, cum laude, 2000
- Rollins College, BA, magna cum laude, President's List, 1997

ADMISSIONS

- District of Columbia
- New York
- U.S. District Court for the Southern District of New York

PUBLICATIONS

- Author, "NY Appellate Division Affirms Seller Retains Privilege for Certain Pre-acquisition Communications," December 9, 2019
- Author, "2nd Circuit Suggests Precise Calculation of Damages Not Needed When Applying Contractual Damages Caps," June 24, 2019
- Author, "The Effects of Assured Guaranty on Securities Law," *Corporate Counsel*, April 18, 2012

McGUIREWOODS



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Senior Counsel

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PRACTICES

Restructuring & Insolvency
Corporate
Consumer Financial Services
Litigation
Distressed Real Estate

INDUSTRIES

Aviation

Shawn focuses his practice on bankruptcy and financial restructuring, including representing debtors, creditors, committees, shareholders and acquirers in out-of-court workouts and Chapter 11 cases.

He is experienced in representing corporate debtors, secured lenders, unsecured creditors, committees, equity holders, asset acquirers, and other parties in interest, in bankruptcy courts throughout the United States.

Prior to joining McGuireWoods, Shawn clerked for the Honorable Robert E. Gerber of the U.S. Bankruptcy Court for the Southern District of New York. He was an Oliver Ellsworth Memorial scholar at the University of Connecticut School of Law.

EXPERIENCE

- Representation of public utility in MF Global Inc. and related insolvency cases regarding 30.7 and 4(d) customer claims.
- Counsel to proposed acquirer under Chapter 11 Plan in Chapter 11 case with three competing Plans.
- Representation of Workflow Holdings, Inc. as Debtor in Chapter 11 case.
- Representation of Greenbrier Hotel Corporation as Chapter 11 debtor.
- Representation of Plan Administrator in ASARCO LLC Chapter 11 cases.
- National bankruptcy counsel for leading financial institution regarding mortgage, servicing and loss mitigation matters.
- Counsel to Canadian-chartered bank as creditor and derivative counterparty in Lehman Bros. Chapter 11 cases.
- Counsel to unsecured creditors committee in U.S. Energy Biogas Corp. Chapter 11 cases.
- Counsel to majority equity holder and DIP lender in Heartland Automotive Holdings, Inc.
- Representation of bank as administrative and collateral agent in workout of \$175 million of debt of major dairy corporation.
- Representation of financially distressed American Fiber Resources in its \$200 million sale to Canadian strategic buyer SFK Pulp.
- Representation of Vernon Downs Acquisition LLC in its successful acquisition of Mid-State Raceway through a competing Chapter 11 plan.

McGUIREWOODS

- Representation of Halcyon (as debtor's largest shareholder) in successful Chapter 11 plan litigation and negotiation in the multibillion-dollar solvent debtor case of NextWave.
- Representation of a member of the official committee of equity holders in the Chapter 11 case of Anaconda, a financially distressed hedge fund manager.
- Representation of several multibillion-dollar hedge funds in evaluating investments in financially distressed companies.
- Representation of secured lender in large out-of-court restructuring.

EDUCATION

- University of Connecticut School of Law, JD, Lead Articles Editor, *Connecticut Insurance Law Journal*, 2002
- Binghamton University, State University of New York, BA, 1999

ADMISSIONS

- New York
- Connecticut
- U.S. Court of Appeals for the 2nd Circuit

HONORS

- Named to "New York Super Lawyers" 2018-2019; "New York Rising Stars," 2014-2017; Bankruptcy: Business, Super Lawyers, Thomson Reuters

PUBLICATIONS

- Author, "2nd Circuit: Secured Lenders Entitled to Market-Rate Interest in Cram-Down Plan," November 13, 2017
- Author, "Second Circuit Rules that Bankruptcy Safe Harbor Preempts State Law Fraudulent Transfer Rights," March 29, 2016
- Author, "JPMorgan Scores Major Victory in Ongoing Lehman Bankruptcy," October 12, 2015
- Author, "Protecting an Expense Reimbursement and Breakup Fee in an Overleveraged World," *Asset Sales Committee Newsletter*, June 1, 2008

EVENTS

- Speaker, "Beating the House: Bondholder Protection After Caesars," SEC Compliance and Disclosure Update,



McGuireWoods LLP SEC Practice Complimentary Webinar
Series, October 25, 2016

AFFILIATIONS

- Member, American Bankruptcy Institute

McGUIREWOODS



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PRACTICES

Financial Services Litigation

INDUSTRIES

Financial Institutions

Lindsay's practice focuses on financial services litigation. She assists individual and corporate clients in a variety of litigation matters. She also devotes time to pro bono matters, including representing clients seeking asylum.

Prior to joining McGuireWoods, Lindsay practiced as a litigator at a New York-based law firm, where she focused on representing corporations and individuals in a variety of business disputes.

EDUCATION

- Benjamin N. Cardozo School of Law, Yeshiva University, JD, Staff Editor, *Cardozo Journal of Law and Gender*, 2015
- Columbia University, BA, 2008

ADMISSIONS

- New York
- U.S. District Court for the Eastern District of New York
- U.S. District Court for the Southern District of New York

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In Re:

Donald F. Wellington

Debtor.

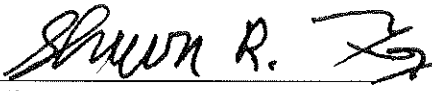
Case No: 20-10080 C-11

AFFIDAVIT OF DISINTEREST OF SHAWN R. FOX

Shawn R. Fox makes solemn oath:

1. That he is Senior Counsel with the firm of McGuireWoods, LLP.
2. That neither he nor said company is a creditor of the Debtor.
3. That he has no interest materially adverse to the interest of any of the creditors of said Debtor by reason of any direct or indirect relationship to, connection with, or interest in said Debtor.
4. That he has no interest adverse to said Debtor in the matters upon which he is to be engaged.
5. That he has been engaged in the representation of the Debtors' daughter but such representation does not adversely affect any creditor of said Debtor, or the Debtor, by reason of any direct or indirect relationship for matters upon which he is to be engaged.

This the 3rd day of March, 2020.

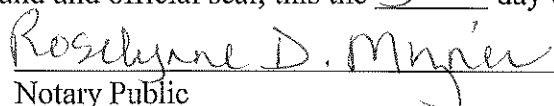

Shawn R. Fox

STATE OF NEW YORK

NEW YORK COUNTY

I, Roselynn D. Mizner, a Notary Public for said County and State, do hereby certify that Shawn R. Fox personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 3rd day of March, 2020.


Notary Public

My Commission Expires: March 7, 2023

ROSELYNNE D. MIZNER
Notary Public, State of New York
No. 01MI5003432
Qualified in New York County
Commission Expires March 7, 2023

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the date indicated below, the undersigned served a copy of the foregoing to the parties as shown below via electronic transmission as may be applicable or by depositing the same in a post-paid wrapper, addressed accordingly, in an official depository of the United States Postal Service, in the manner prescribed by law:

CM/ECF:

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William P. Miller

First Class Mail:

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See Attached Matrix

THIS the 4th day of March, 2020.

/s/ Charles M. Ivey, III

Charles M. Ivey, III, Attorney for Debtor

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Case 20-10080
Middle District of North Carolina
Greensboro

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